

## RESTRICTIVE COVENANT 1

[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [name of property owner], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- [LIST ALL APPLICABLE DOCUMENTS. INSERT THE DATE AND TITLE FOR EACH DOCUMENT LISTED INCLUDING THE NAME OF THE PERSON(S) OR BUSINESS WHO PREPARED THE DOCUMENT.]

These documents are on file at Ecology's Northwest Regional Office.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of [specifically list substances] which exceed the Model Toxics Control Act Method [list applicable Method A or Method B] for soil and groundwater established under WAC 173-340-740.

The undersigned, [name property owner] is the fee owner of real property (hereafter "Property") in the County of [name of county], State of Washington that is subject to this Restrictive Covenant. The legal description of the Property is as follows:

### LEGAL DESCRIPTION

[Insert legal description or include as an attachment and incorporate by reference]

[Name property owner] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for any purposes from the Property.

INSERT SECTION HERE IF CONTAMINATED SOIL REMAINS ON PROPERTY UNDERNEATH A STRUCTURE OR PAVEMENT, etc. A portion of the Property contains [specifically list substances] contaminated soil located [specifically describe where located, i.e. under the southeast portion of Building 10 in the northeast portion of the Property]. The Owner

shall not alter, modify, or remove the existing structures[s] in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology, including prior approval by Ecology of the Owner's plans to properly manage contaminated soil.

Section 2. Soil contamination remains on [portions of] the property underneath a cap consisting of a minimum of two feet of clean soil. [DESCRIBE WITH SPECIFICITY AND LEGAL DESCRIPTION WHERE ON THE PROPERTY IN QUESTION THE SOIL IS CAPPED]. Any activity on [these areas or in close proximity to these areas of] the Property that may result in the release or exposure of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway is prohibited without prior written approval from Ecology, including prior approval by Ecology of the Owner's plans to properly manage contaminated soil.

Examples of activities requiring Ecology approval include activities such as drilling, digging, bulldozing or other earthwork when any such activity penetrates the fill by more than 18 inches (except for the installation of fence posts as discussed further below), or the placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability. Prior Ecology approval is not required when activity is undertaken that affects only the top 18 inches or less of the soil cap and therefore does not result in exposure of any contaminated soils that remain under the cap, provided such activity does not stress the surface beyond its load bearing capability, and provided a minimum of two feet of clean soil will be in place at the completion of the activity.

The Owner may, however, install fence posts or other posts when doing so would disturb soil below a depth of 18 inches, without prior Ecology approval. Contaminated soil brought to the surface by installation of fence posts or other posts must be placed into containers or covered with plastic sheeting to prevent contact, especially contact by children. The contaminated soil may be returned to the hole as fill around the fence post. At the conclusion of the post installation the contaminated soil must either be (1) beneath two feet of clean fill, or (2) if placed within two feet of the surface, capped with a minimum of 3 inches of concrete or asphalt at the top of the hole. Any contaminated soil which cannot be managed on site must be disposed of off-site at a properly permitted facility.

If structures, paving, or asphalt are constructed or placed on the property at any point in the future, and contaminated soil is contained beneath the structure, paving, or asphalt, the Owner shall not alter, modify, or remove the structures, paving, or asphalt in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology, including prior written approval of the Owner's plans to properly manage contaminated soil.

Section 3. Except as provided in Section 2, any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment, or that may result in a release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action or create a new exposure pathway, is prohibited.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

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[NAME OF PROPERTY OWNER]

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[DATE SIGNED]

[Property Owner must have this Restrictive Covenant notarized]

## RESTRICTIVE COVENANT 2

**[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]**

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by **[name of property owner]**, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- **[LIST ALL APPLICABLE DOCUMENTS. INSERT THE DATE AND TITLE FOR EACH DOCUMENT LISTED INCLUDING THE NAME OF THE PERSON(S) OR BUSINESS WHO PREPARED THE DOCUMENT.]**

These documents are on file at Ecology's Northwest Regional Office.

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of **[specifically list substances]** which exceed the Model Toxics Control Act Method **[list applicable Method A or Method B]** for groundwater established under WAC 173-340-740.

The undersigned, **[name property owner]** is the fee owner of real property (hereafter "Property") in the County of **[name of county]**, State of Washington that is subject to this Restrictive Covenant. The legal description of the Property is as follows:

### LEGAL DESCRIPTION

**[Insert legal description or include as an attachment and incorporate by reference]**

**[Name property owner]** makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for any purposes from the Property.

Section 2. Any activity on the Property that may interfere with the ~~integrity of the Remedial Action and~~ continued protection of human health and the environment, or ~~is prohibited.~~

~~Section 3.~~ Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 34. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 45. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 56. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 67. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 78. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

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[NAME OF PROPERTY OWNER]

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[DATE SIGNED]

[Property Owner must have this Restrictive Covenant notarized]